brought suit in the federal district court to enjoin enforcement of the franchise rates on the ground that they constituted a taking of its property without due process of law. *Held*, that the bill be dismissed. *Columbus Railway, Power & Light Company* v. *City of Columbus*, 249 U. S. 399 (1919).

For a discussion of the principles involved, see NOTES, p. 97.

STATUTES — INTERPRETATION — EXCLUSIVENESS OF STATUTORY REMEDY. — A statute provided in substance that the municipalities of the state pay dependent families of soldiers and sailors a certain sum for each week of service. A failure to pay the money subjected the municipalities to a penalty recoverable by the injured claimant in an action on the case (1917 LAWS OF MAINE, c. 276). The plaintiff, dependent wife of a service man, brought an action against the defendant town to recover the amount she would have received if the stipulated payments had all been made. *Held*, that she could not recover. *Nash* v. *Inhabitants of Sorrento*, 107 Atl. 32 (Me.).

The general rule undoubtedly is that where a statute creates a new duty and expressly provides a remedy for its enforcement, such remedy is exclusive. *Mairs* v. *B. and O. R. R. Co.*, 73 N. Y. App. Div. 265, 76 N. Y. Supp. 838; *Brattleboro* v. *Wait*, 44 Vt. 459. The rule is upheld even when the remedy is admittedly inadequate. *Globe Newspaper Co.* v. *Walker*, 210 U. S. 356; *Kennedy* v. *Reames*, 15 S. C. 548. The solution of any case involving a breach of statutory duty depends so largely upon the construction of the particular statute that any sweeping rule or formula is unwise. See *Groves* v. *Wimborne*, [1898] 2 Q. B. 402, 416. The providing of a criminal remedy should not be held to exclude a civil remedy when it is clear that the legislature in creating the new right intended to benefit the class to which the injured plaintiff belongs. *David* v. *Britannic Coal Co.*, [1909] 2 K. B. 146; *Willy* v. *Mulledy*, 78 N. Y. 310. In effect, the decision leaves payment of a lump sum or a series of weekly payments optional with the towns, and sets a maximum recoverable at law by dependents of service men. The holding may perhaps be justified on the theory that the legislature's purpose was primarily to benefit the state as such, by relieving it temporarily of the burden of maintaining persons likely to become public charges.

STATUTE OF FRAUDS — PART PERFORMANCE — PAROL AGREEMENT FOR CHANGE OF LOCATION OF EASEMENT. — The plaintiff had a prescriptive easement of a ditch across the defendant's land. The parties orally agreed to a change of location advantageous to the defendant. The old ditch was filled up and a new one constructed. The plaintiff sued to enjoin an obstruction of the new ditch. *Held*, injunction granted. *Babcock* v. *Gregg*, 178 Pac. 284 (Mont.).

The entire doctrine that part performance will sometimes take a case out of the Statute of Frauds may well be criticized. See Lord Blackburn, *Maddison* v. *Alderson*, L. R. 8 A. C. 467, 487. But the doctrine being well established, at least there should always be required acts of part performance which are unequivocally referable to an agreement concerning the land. *McManus* v. *Cooke*, 35 Ch. D. 681; *Wiseman* v. *Lucksinger*, 84 N. Y. 31. In addition, the circumstances should be such that it is more equitable to go forward than to undo what has already been done. See Lord Selborne. *Maddison* v. *Alderson*, L. R. 8 A. C. 467, 470. The principal case can be supported upon these grounds. Further, nonuser coupled with acts which clearly indicate an intention to abandon an easement effect a present extinguishment of it. *King* v. *Murphy*, 140 Mass. 254; *Snell* v. *Levitt*, 110 N. Y. 595. Therefore, having lost the old easement, the plaintiff here would be irreparably injured if he were not protected in the enjoyment of the new one. The situation could be met by a decree enjoining the obstruction of the new easement unless the old one were

restored. There is strong authority that would go no further than this. *Hamilton* v. *White*, 5 N. Y. 9; *Wright et al.* v. *Willis*, 23 Ky. L. Rep. 565, 63 S. W. 991. Many jurisdictions would reach the result of the principal case on the doctrine that a parol license becomes irrevocable after money has been expended on improvements on the strength of it. *Rerick* v. *Kern*, 14 S. & R. (Pa.) 267; *Ferguson* v. *Spencer*, 127 Ind. 66. But the weight of authority is now opposed to this doctrine and rightly so. *Crosdale* v. *Lanigan*, 129 N. Y. 604; *The St. Louis Nat. Stock Yards* v. *The Wiggins Ferry Co.*, 112 Ill. 384.

TAXATION — PARTICULAR FORMS OF TAXATION — INCOME TAX — WHETHER BUSINESS TRUSTS ARE TAXABLE AS ASSOCIATIONS UNDER THE FEDERAL INCOME TAX LAW. — The Income Tax Act of October 3, 1913, subjects to the normal tax the net income of "every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships" (38 STAT. 114). The plaintiffs, trustees of a Massachusetts business trust, seek to recover that portion of an income tax which was collected from them on the theory that the trust constituted an association within this provision. *Held*, that such sum be refunded. *Crocker et al.* v. *Malley, Collector of Internal Revenue*, 249 U. S. 223.

Statutes levying taxes are to be strictly construed. *Gould* v. *Gould*, 245 U. S. 151, 153. The decision that neither the trustees nor the beneficiaries, nor both of them together, were an association within the meaning of such a statute seems right. *Cf. Williams* v. *Milton*, 215 Mass. 1, 102 N. E. 355. It is submitted that the terms of the statute, in this respect, have not been broadened by the subsequent Income Tax Acts. See 39 STAT. 765, 40 STAT. 333; REVENUE ACT OF FEB. 24, 1919, § 1. The United States Internal Revenue Regulations for 1918, however, expressly provide that the term "association" should include these business trusts. See REGULATIONS 33, revised (T. D. 2690), Arts. 57, 58. But it seems very doubtful whether the rules of an executive department can, in this way, reverse the judicial definition of a provision of a statute.

TORT — LIABILITY WITHOUT INTENT OR NEGLIGENCE — OWNER OF AUTOMOBILE. — The plaintiff leased rooms in the building in which the defendant kept his automobile. As the defendant's chauffeur was starting the motor, without any negligence on his part, gasoline in the carburetor caught fire. But due to the negligence of the chauffeur the fire was allowed to spread and consumed the plaintiff's property. *Held*, that the defendant was liable. *Musgrove* v. *Pandelis*, [1919] 2 K. B. 43.

A number of American courts have stated that an automobile is not a dangerous instrumentality imposing absolute liability on the owner. See *Steffen* v. *McNaughten*, 142 Wis. 49, 52, 124 N. W. 1016, 1017; *Jones* v. *Hoge*, 47 Wash. 663, 665, 92 Pac. 433, 434. But in these cases it is the negligent operation of the machine, not its mere existence, which is a menace, so that the doctrine of *Rylands* v. *Fletcher* is not squarely involved. See *Rylands* v. *Fletcher*, L. R. 3 H. L. 330. In the principal case an automobile is said to be an agency dangerous *per se* within the rule in *Rylands* v. *Fletcher*. This seems doubtful on principle. Under particular circumstances the storage inside a garage of gasoline and of automobiles containing gasoline has been enjoined as a nuisance. *O'Hara* v. *Nelson*, 71 N. J. Eq. 161, 63 Atl. 836 and 842. But this is far from a decision that an individual automobile is an instrument inherently dangerous. Although the decision might have been rested on another ground, the case is at least one more manifestation of a noticeable vitality of the *Rylands* v. *Fletcher* doctrine in England. *Cf. Charing Cross Co.* v. *London Hydraulic Power Co.*, [1914] 3 K. B. 772; *Greenock Corp.* v. *Caledonian Ry. Co.*, [1917] A. C. 556.